

## **DETAILED ACTION**

### ***Claim Rejections – 35 USC § 102***

Claims 26, 27, and 38 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,324,781 to Stevens.

Regarding Claim 26, 27, 38, Stevens teaches a colored mulch product (Stevens abstract line 2) consisting essentially of: a material comprising a fiber cellulose, clay, loam, sand, and/or a combination of same; a binding agent (Stevens Col. 2 line 2); and a dye and/or pigment (Stevens Col. 6 line 35). Stevens teaches a dye and that the dye indicates to a user environmental conditions of the soil where the mulch is placed. The mulch of Stevens includes both a dye and a fertilizer. Therefore, when the user sees the mulch color the user will know that mulch has been applied to that portion of soil along with a fertilizer i.e. that soil portion has been fertilized which is an environmental condition.

Claim 26 requires a dye which indicates to a user environmental conditions of the soil where the mulch is placed. Stevens teaches a coloring added to enhance the appearance of a mat. For example, the color may be green to match a lawn or grass area. The Examiner comes up with a hypothesis that Stevens can color the mulch to show when a soil has been fertilized. The Examiner points to no such example and no such teaching. Stevens' only description is for appearance. Therefore, claims 26, 27 and 38 are not anticipated or obvious over Stevens.

***Claim Rejections – 35 USC § 103***

Claims 26, 27, 28, 29, 30, 38, and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,324,781 to Stevens in view of U.S. Patent No. 6,019,062 to Lombard et al.

Regarding Claim 26, 28, 29, 30 and 50, Steven teaches a colored mulch product (Stevens abstract line 2) consisting essentially of: a material comprising a fiber cellulose, clay, loam, sand, and/or a combination of same; a binding agent (Stevens Col. 2 line 2); and a dye and/or pigment (Stevens Col. 6 line 35). Stevens teaches a dye, but is silent on the dye **indicates** to a user environmental conditions of the soil where said mulch is placed; the dye **indicates** to a user the moisture content of said soil; or the dye **indicates** to a user the chemical content of said soil and it is an environmentally safe dye (Lombard abstract second to last line).

However, Lombard et al teaches a dye indicator i.e. a pH indicating dye for application to cellulosic material such as paper (Lombard Col. 2 line 1-5 and Col. 2 line 11-15; Col. 2 line 60-67). It would have been obvious to one of ordinary skill in the art to modify the teachings of Stevens with the teachings of Lombard at the time of the invention since the modification is merely an engineering design choice involving the selection of a known alternate dye selected for the known advantage of monitoring pH levels as taught by Lombard and is an environmentally safe dye as taught by Lombard (Lombard abstract).

As stated previously Stevens relates to a mulch or seed mat for horticultural applications. The dye used in Stevens is purely added to enhance the appearance of the mat. Lombard relates to animal litter. The litter is impregnated with a pH indicating solution to provide a visually detectable color transition at a particular pH level. The Examiner states that it would be obvious to modify the teaching of Stevens with that of Lombard. However, since neither of the references alone or in combination understand the problem of the present application which is to indicate to a user the condition of soil, there is no teaching of obviousness in combining the two references. Further, Lombard uses the pH indicating solution to show the urine concentration of the material. Therefore the above claims are not obvious over the above prior art.

Regarding Claim 27, Stevens as modified teaches the mulch comprising; nitrogen, phosphorous, and potassium fortifiers (Stevens abstract last line).

For the reasons stated above claim 27 is not obvious of the prior art.

Regarding Claim 38, Stevens as modified teaches the mulch is the same or similar color of an actual plant, flower, fruit, or vegetable of a seed planted with the mulch (Stevens Col. 6 line 37).

For the reasons stated above claim 38 is not obvious of the prior art.

Claim 52 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,324,781 to Stevens in view of U.S. Patent No. 6,019,062 to Lombard et al as applied to claim 26 above, and further in view Japanese Patent JP 01262735 A to Yamnar Agricult Equip Co LTD.

Regarding Claim 52, Stevens as modified teaches a method of placing colored mulch on top of soil; changing the colors of the mulch based on the condition of the soil. Stevens is silent on adding chemicals to the soil based on the color of the mulch. However, it is old and notoriously well-known in the art of plant husbandry to observe and test soil conditions to see if they meet the desired parameters and to adjust the parameters when necessary. Yanmar teaches the general knowledge of one of ordinary skill in the art to add fertilizer when the pH is out of desired range (Yanmar abstract and Fig. 1#2). General knowledge that the pH of a growing medium component determines the addition of fertilizer. It would have been obvious to one of ordinary skill in the art further modify the teachings of Stevens with the teachings of Yanmar at the time of the invention for the advantage of promoting healthy plant development. Examiner takes official notice that it is old and notoriously well-known to add fertilizer based on a pH of the soil e.g. tomato plants prefer a certain acidity in the soil for healthy development so it is general practice to test the pH to determine if and how much fertilizer is needed.

As stated above the combination of Stevens and Lombard does not teach changing colors of said mulch based on the condition of the soil. The fact that the Japanese patent cited by the Examiner teaches adding fertilizer when the pH is out of range does not add to the teaching that the mulch must change colors based on the condition of the soil. Therefore, claim 52 is not obvious over the prior art.

Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,324,781 to Stevens in view of U.S. Patent No. 5,734,167 to Skelty.

Regarding Claim 32, Steven teaches coloring the mulch, but is silent on the dye is fluorescent. However, Skelty teaches it is old and notoriously well-known to dye agricultural products with fluorescent dye allowing the mulch to glow in the dark (Skelty Col. 1 line 35-45). It would have been obvious to one of ordinary skill in the art to further modify the teachings of Stevens with the teachings of Skelty at the time of the invention since the modification is merely the selection of a known alternate coloring for the advantage of enabling safe night time agricultural operations as taught by Skelty (Skelty Col. 1 line 1-26).

For the reasons stated above for claim 32 the above prior art does not make the claim obvious.

Claim 47 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,067,140 to Thomas in view of U.S. Patent No. 6,019,062 to Lombard et al.

Regarding Claim 47, Thomas teaches a colored mulch product (Thomas abstract) comprising; a material comprising a fiber cellulose (Thomas abstract first line), clay, loam, sand, and/or a combination of same; a binding agent (Thomas Col. 1 line 30 “wetting agent” and Col. 4 line 35-41); and a dye and/or pigment (Thomas Col. 1 line 35) produced by a lifting and tumbling agglomeration operation (Thomas Col. 2 line 65-66. Thomas teaches adding

fertilizer to the mulch mixture (Thomas Col. 1 line 15). Thomas is silent on the dye indicates to a user the environmental conditions of the soil where the mulch is place. However, Lombard et al teaches a dye indicator i.e. a pH indicating dye for application to cellulosic material such as paper (Lombard Col. 2 line 1-5 and Col. 2 line 11-15; Col. 2 line 60-67). It would have been obvious to one of ordinary skill in the art to modify the teachings of Stevens with the teachings of Lombard at the time of the invention since the modification is merely an engineering design choice involving the selection of a known alternate dye selected for the known advantage of monitoring pH levels as taught by Lombard.

For the reasons stated above regarding Stevens and Lombard none of the above references alone or in combination teaches that the dye indicates to a user environmental conditions of the soil where the mulch is placed.

Claim 50 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,324,781 to Stevens in view of U.S. Patent No. 5,697,984 to Swatzina et al.

Regarding Claim 50, Stevens teaches a colored mulch product wherein the color, but is silent on the mulch product fades or disappears in response to a lack of fertilizer in the mulch. Stevens teaches the mulch product is made up of fertilizer (Stevens abstract last sentence), mulch plus fertilizer makes a mulch product. Swatzina teaches it is old and notoriously well-known to color fertilizer (e.g. red fertilizer Swatzina; Col. 2 line 31-33 and Example 4). One of ordinary skill in the art would be motivated to modify the teachings of Stevens with the

teachings of Swatzina at the time of the invention for a desired aesthetic design. Stevens as modified by Swatzina, i.e. the selection of red fertilizer, would inherently teach that as the red disappears or fades from the mulch the fertilizer is disappearing too.

As stated above Stevens only teaches the use of color for appearance purposes. It is against the teachings of Stevens to have that color fade or disappear. Therefore, Stevens in view of Swatzina does not make obvious claim 50.

Applicant believes that the application is in condition for allowance.

Respectfully submitted,



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